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Part 520 — Technical Assistance, Exemptions, Variances, and Investigations

Subpart A — Technical Assistance in HELC Implementation

520.01 Requirements for Measuring Crop Residue Measurement

a Introduction

The 1985 Act, as amended, permits persons (producers) to provide crop residue measurements (including those provided by a third party) for determining compliance with required residue levels included in the conservation system.

b Measurement

Methodologies for measuring crop residue are currently available to all persons. Measurement of crop residue in the field is an important consideration in determining the performance of cropping systems with regard to erosion management.

Measurements made by third parties and used by a producer will be the producer's official measurements.

Note: Crop residues incorporated within the top two inches of the soil profile as well as the effects of the growing crop shall be accounted for in status reviews using RUSLE technology and are NOT part of the crop certification process.

c Measurement Techniques

Crop residue measurements shall be completed according to the procedures set forth the [National Agronomy Manual](#) (NAM), Part 503, Subpart E, Section 503.43 for the "Line-Transect Method" and the National Range and Pasture Handbook (NRPH), [Chapter 4](#), Inventorying and Monitoring Grazing Land Resources for the "Clip-and-Weigh Method."

d Third-Party Crop Residue Measurements

As provided for in the Food Security Act of 1985, as amended, a USDA participant may utilize the services of a third-party technical service provider to make crop residue measurements.

All measurements provided in this manner shall be completed according to the procedures set forth the [National Agronomy Manual](#) (NAM), Part 503, Subpart E, Section 503.43 for the "Line-Transect Method" and the National Range and Pasture Handbook (NRPH), [Chapter 4](#), Inventorying and Monitoring Grazing Land Resources for the "Clip-and-Weigh Method."

520.02 Requirements for Self-Certification

a Self-Certification

A USDA participant may provide self-certification of—

- Compliance with the HELC/WC provisions (on the AD–1026).
- Application of the required HEL conservation plan or HEL conservation system practices.
- Crop residue measurements.

b Certification of Planning and Application

Person(s) or (producers) are responsible for making decisions necessary for applying practices as scheduled in the conservation system.

When the practices in a conservation system are not applied as scheduled, the land will be in noncompliance unless the person provides information to the satisfaction of the local conservationist that the system being applied meets the criteria in the FOTG. (See NFSAM, Part 518, Paragraph [518.23\(c\)](#) on specific prohibitions regarding making non-compliance and/or potential violation determinations.)

If the system being applied is not documented in a conservation plan, the persons responsible for planting the agricultural commodity, as well as all signatories to the AD–1026, are responsible for providing the appropriate records for evaluating the system being applied with the criteria contained in the FOTG.

c Requirements for Third-Party Vendors and Technical Service Providers

Any person that wants to provide or is providing technical assistance to a USDA participant regarding certification of compliance with the HELC/WC provisions must meet the requirements set forth in the Interim-Final Regulation, [7 CFR 652](#), Technical Service Provider Assistance.

d Records of Plan/System Application

Evaluation of conservation systems is best done over the cycle of one or more crop rotations rather than in any given year. In order to do this, it is necessary to establish and annually review system history records.

Persons are encouraged to keep records of crop rotations, tillage operations, and maintenance work done on structural practices, including drainage systems, in order to support their certification of compliance made on the AD–1026.

d Information to Document

Historical records may be used in conducting status reviews. Annual documentation needed for each field can include—

- Management records
- Maintenance records
- Residue level after planting
- Crops grown and rotations used
- Use of any cover crops
- Agrichemical use records

- Tillage operations used
- Custom harvesting records
- Other treatments or practices used
- Acreage reported for crop insurance policy or loss adjustment

Note: This is not an all-inclusive list of historical records that may be useful in documenting the status of compliance on a field or tract.

Developing and maintaining the historical record is the person's responsibility. This information may be kept by the producer, agrichemical industry representatives, certified crop advisors, or consultants. Information must be made available to NRCS for use in conducting status reviews.

As long as the person's record shows the use of an acceptable HEL conservation system over a period of years, a deficiency occurring in a field in a single year will not be the sole basis for a noncompliance decision.

520.03 Reinstatement Guidelines

a Reinstatement

Reinstatement may occur in any crop year after the crop year in which the person was determined by FSA to be ineligible.

A person is ineligible to receive benefits after a determination of “not applying” has been made. Eligibility may be reinstated when the USDA participant revises the HEL conservation plan or system, and/or agrees to install the identified uncompleted practices before the end of the crop year for which benefits are requested.

b Responsibilities of USDA Participant

The USDA participant must request technical assistance for reinstatement purposes from NRCS to revise the HEL conservation plan or plan an approved HEL conservation system, and—

- Agree to install all identified uncompleted practices before the end of the crop year in which benefits were requested, or agree to complete an approved conservation system by the end of the crop year.
- Sign the revised, approved conservation plan or approved conservation system..
- Continue to apply and maintain all scheduled practices in the approved plan or system.

c NRCS Actions

After receiving a request from the person desiring reinstatement, NRCS will, within 45 days—

- Provide technical assistance to revise the plan or plan an approved system and install the required practices.
- Certify that the plan or approved conservation system meets FOTG requirements.
- Obtain approval of the revised plan or system from the Conservation District.

d Notification

When the revised plan or system has been approved, NRCS will notify FSA on NRCS–CPA–027 that the person is now considered to be actively applying the HEL conservation plan or system and is subject to a status review before the end of the crop year for which benefits are requested.

Enter the following statement on the NRCS–CPA–027:

"This NRCS–CPA–027 is effective beginning with the (specify year) crop years subject to a status review in that crop year."

Schedule and conduct a status review within the crop year for which the person requested reinstatement.

Note: Conditions for reinstatement regarding wetland conservation provisions are set forth in NFSAM, Part 517.

520.04 Handling Reports of Possible Noncompliance

a Requirements and Sources

NRCS shall investigate possible noncompliance or deficiencies and document the findings. Sources of information about possible noncompliance and/or deficiencies are as follows:

- Observations by NRCS or USDA employees.
- Referrals from FSA on FSA-569.
- Reports by the public (whistleblowers).

b NRCS Actions

When a whistleblower report is received from the public or an FSA-569 is received from FSA, take the actions required as set forth in the NFSAM, Parts [518](#) and [520](#). When NRCS personnel observe possible conservation compliance deficiencies on HEL while providing technical assistance, take the actions specified in the NFSAM, Section [520.11](#).

c Reports Affecting Other Agencies

Possible noncompliance reports involving items that are not an NRCS responsibility will be sent to the State Conservationist. On receipt of the report, the STC will—

- Forward the details of the report to the appropriate agency.
- Inform the person who filed the complaint, if known, that the complaint has been sent to the other agency for investigation.

d Report of Possible Noncompliance Register

Each office shall establish a "Report of Possible Noncompliance" register that shall include the following information:

- Type of complaint (HELC, wetland, and so forth)
- Tract number
- Tract owner and/or operator name
- Name of complainant
- Date received
- Date report completed
- Details of the potential violation or noncompliance event

e Confidentiality of Reported Noncompliance

The name of a confidential source shall not be entered in the case file but should be maintained in the "Report of Possible Noncompliance" register. Assume that the person who provided the report expects confidentiality unless specifically stated otherwise. The following noncompliance report records are not available to the public.

- Register of Reports of Possible Noncompliance.
- Report of possible noncompliance provided to NRCS by a confidential source.

These records are protected under the Freedom of Information Act (FOIA) exemption 7(D).

f Final Report of Possible Noncompliance

A final report of the finding of the investigation and all documentation to support the finding will be placed in the case file that contains the tract(s) that was investigated. The name of the

confidential source must not appear in the final report nor shall the name appear as a reference in the case file.

The final report is available under FOIA.

g Monitoring Reports of Possible Noncompliance

Area- and State-level personnel should review the register and reports during quality control reviews. The State Conservationist will inform the appropriate NHQ division director of major concerns.

520.05 Investigation Procedure

a When Complaint is Received

NRCS will—

- Inform the person, organization, or agency that made the report (if known) that their report has been received and is under investigation.
- Determine if a current AD-1026 has been filed with FSA for the tract and if the producer is a USDA participant for the current year.
- If a current AD-1026 has not been filed for the site, do not investigate. If the complaint involves a wetland or farmed wetland on land of a tract where an AD-1026 has not been filed as determined by FSA, send the person a letter with copies to FSA, the State Conservationist, and the Conservation District.
- If a current AD-1026 is on file with FSA, request an FSA-569 from FSA, then—
 - If the complaint is for HEL, complete a compliance review according to the policy set forth in the NFSAM, [Part 518](#).
 - Complete an investigation of the potential converted wetlands according to policy set forth in the NFSAM, Part 514.

b Timing of the Investigation

Whistleblower complaints and/or requests for a compliance review referred to NRCS on form FSA-569 shall be completed within the following time frames:

- Within 30 days in a field office.
- Within 45 days in an area or State office.

If the status of HELC/WC compliance cannot be completed as set forth in this manual, and/or the compliance review cannot be completed due to weather, time of the year, inability to assess the conservation system that was used to plant the agricultural commodity, inability to validate the vegetation, and/or inability to measure crop residues correctly, NRCS shall notify FSA in writing that a potential violation has been reported. The notification shall include all known information regarding the potential violation as well as the reasons that the NRCS cannot complete the violation investigation at the time of the notification.

520.06 Preventing Fraud, Waste, and Abuse

a Introduction

There is the potential for the occurrence of fraud, waste, or abuse resulting from the HELC/WC compliance provisions unless all of the requirements for implementing and administering the provisions set forth in the statute (16 U.S.C. 3801 et seq.), regulation (7 CFR Part 12), and this manual are adhered to.

b Examples of Fraud, Waste, and Abuse

Fraud includes, but is not limited to, knowingly and willfully—

- Entering false information into government records.
- Making an improper determination of eligibility for any conservation program.
- Reporting tracts as having HEL conservation plans or systems adequately applied when no plans or systems exist.
- Determining an HEL field to be NHEL or determining wetland to be non-wetland.
- Failing to report a finding of not actively applying or using an approved conservation system during a status review.
- Providing a minimal effect determination that does not follow established policy.
- Determining an area with woody vegetation to be prior converted cropland or farmland when it is not.
- Willfully allowing the 30-day time limit to expire on a request for temporary variances that involves the use of practices or measure to address weather, pest, or disease-related problems.
- Willfully not providing notification of the possible violations within the specified 45-day time period when the potential violation is found during the regular provision of technical assistance.

c Responsibilities and Action

All employees are responsible for understanding the correct actions to take when there is any suspicion of fraud, waste, or abuse. The State Conservationist will ensure that each case where an employee is suspected of fraud is turned over to the Office of the Inspector General (OIG), Investigation Branch.

Note: Each State shall supplement this section with the name and address of the appropriate regional OIG office.

520.07 Threats, Assaults, Harassment, and Bribery

a The Potential for Threats, Assaults, and Harassment

The potential for encountering a threat or assault is always present. The performance of duties relating to the implementation of the HELC/WC provisions has increased the potential for employees to encounter threatening situations.

Threats, assaults, or harassment may occur in the field, in the office, over the telephone, by letter, or from a third party. All incidents of threats, assaults, or harassment will be taken seriously by NRCS and will be dealt with appropriately.

b Employee Action

All incidents should be reported to the supervisor regardless of where it occurs or how insignificant it may appear. Seek medical attention, if necessary. A doctor's report may serve as evidence. Notify the State Conservationist, the supervisor, the CD, OIG, the OGC Field Office, and other employees who might also be at risk.

c Employee Action Details

If an NRCS employee is threatened while providing technical assistance either in the office or in the field—

- Remain calm and do not argue.
- Ask person to leave the office or leave the scene as quickly as possible.
- Call the local law enforcement authorities if the person refuses to leave and/or persists in making threats.
- Prepare a written report on the incident as set forth in paragraph 520.07(d).

d Report Requirements

Prepare a written report on all threats, assaults, or harassment accurately:

- Stating events that led to the incident.
- Describing the incident in detail.
- Using direct quotes whenever possible.
- Stating facts and avoiding supposition.
- Include statements of witness whenever possible.

Contact local law enforcement authorities and file charges as appropriate.

e Suspend Technical Services

Suspend technical services until the threat to employees has been removed to the satisfaction of the State Conservationist. The STC shall—

- Inform the person, in writing, that technical services are withdrawn.
- Send copies of the letter to the Area Conservationist or designee and District Conservationist.

f Status or Quality Reviews

Take action according to this table if a threat or assault resulted during a status or quality review.

IF an incident occurs...	THEN...
And the status or quality review was completed on a tract,	Complete the review documentation and follow policy as set forth in paragraphs 520.07 paragraph d and paragraph e).
And an NRCS employee was prevented from making or completing the status or quality review,	Request FSA to issue an FSA-569. NRCS will report the tract as not meeting the requirements of the HELC/WC provisions due to being prohibited or prevented from entry or from completing required reviews according to the regulation.

g Definition of Bribery

Bribery is the offering, giving, receiving, or soliciting of anything of value to influence an official act of an employee.

Bribery or attempted bribery of NRCS employees is a serious violation of Federal law and is punishable by prison terms and fines. Bribes may be—

- An offer of money or anything else of value in excess of \$20.00.
- Offered directly or indirectly and/or subtly or unsubtly.

h Employee Responsibility

Employees must be perceptive and alert in recognizing bribes and report them immediately. Employees are not to report bribery or attempted bribery through normal administrative channels. If a report of bribery or attempted bribery is given to an employee, he or she is not to discuss it or attempt to investigate it.

Employees who are offered a bribe or who believe that a bribe was offered to, solicited by, or accepted by another employee are to immediately report the incident directly to the appropriate regional Office of the Inspector General (OIG).

The State Conservationist shall supplement this sub-paragraph to include the address of the appropriate regional office. Employees are also to report situations in which, although a direct offer is not made, it is suspected that the employee is being "felt out" and that an offer of a bribe could be inferred.

i Supervisor Responsibility

Supervisors who receive bribery information not previously reported must report it to OIG immediately.

520.08 Incorrect Information by a Person

a Incorrect Information

If NRCS suspects that a person has knowingly supplied incorrect information, review the information with the person prior to taking action according to this paragraph.

Incorrect information includes the following:

- Not providing information on an AD-1026.
- Providing incorrect information on an AD-1026
- Providing other inaccurate or incorrect information.

b NRCS Actions

If NRCS confirms that incorrect information has been provided, NRCS will—

- Suspend any further services to the person.
- Inform the person and FSA of the finding and action needed to correct information.
- If a potential violation exists, request an FSA-569 from FSA.
- Document the findings in a letter, through channels, to the State Conservationist with a copy to FSA and the person.
- Place a copy of the letter and FSA-569 in the person's case file.

c Resume Services

Services may resume when the person provides correct information.

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Part 520 — Technical Assistance, Exemptions, Variances, and Investigations

Subpart B — Handling HEL Compliance Deficiencies, Exemptions and Variances

520.10 Introduction

a Exemptions

The 1985 Food Security Act, as amended, provides for the following exemptions from the HELC or the WC provisions, or both:

- Deficiency found while providing technical assistance (HELC).
- Good-faith exemption (HELC and WC).
- Sodbuster — Small acreage exemption (HELC).
- Relief for undue economic hardship (HELC).

b Variances

The 1985 Act, as amended, provides for the following variances for from the HELC or the WC provisions, or both:

- Variance for a minor technical violation (HELC).
- Variance when special conditions, including weather, pests, or disease exist (HELC)
- Variance for extreme personal hardship (HELC).

c Authority for Granting Exemptions and Variances

Sections 1213, 1215, and 1222 (16 U.S.C. 3812, 16 U.S.C. 3814, and 16 U.S.C. 3822(b)) of the Food Security Act of 1985, as amended provides the authority and criteria under which USDA agencies (FSA and NRCS) may grant variances or exemption from potential violations or situations of noncompliance with the HELC and/or WC provisions.

d Criteria for Granting Exemptions and Variances

The State Conservationist may delegate authority for granting variances to other NRCS conservationists if the following procedures have been established:

- State criteria have been established for granting variances, including requirements for documentation, and made a State supplement to the NFSAM.
- Training on all variances and the specific criteria has been provided to the NRCS employees given the delegated authority.

e Review and Followup After Granting Variances and Exemptions

A compliance review shall be required for every tract provided with a variance or exemption from the HELC and/or WC provisions in the previous year (see NFSAM, Part 518, Paragraph [518.20\(c\)](#)) to determine the following information:

- If the reason for the variance has been alleviated.
- That the producer is using an acceptable conservation system.

A complete compliance review does not need to be repeated unless the need to do so is determined by the local conservationist or the tract is again randomly selected for a compliance review.

520.11 HEL Compliance Deficiencies Found While Providing Technical Assistance (TA)

a Notice and Investigation of Potential HELC Deficiencies

The Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127, 110 Stat., Section 315(1)) set forth provisions at 16 U.S.C. 3814 that make available an exemption from the HELC provisions if the following criteria are met:

- A potential HELC violation has been observed by a USDA employee while providing technical assistance.
- The technical assistance being provided to the USDA participant when the violation has been observed does not involve an official compliance review of HELC or a whistleblower investigation.

b The 45-Day, One-Year Rule

If a USDA participant is found to be out of compliance with the HELC provisions, the NRCS employee that has observed the potential violation shall—

- Provide notification of the nature of the violation as well as technical assistance in the form of the conservation treatment needed to be in compliance with the provisions within 45 days of the violation having been found.
- If the USDA participant signs an HEL conservation plan developed by NRCS for the purposes of complying with the HELC provisions, NRCS shall provide sufficient time in which to apply the needed treatments of the HEL conservation system, not to exceed one year from the date the HEL conservation plan is signed by all parties.
- Inform the participant that the tract found in violation of the HELC provisions will be reviewed the following year to ensure that the HEL conservation system is being fully implemented.

c Situations Not Considered as Routine NRCS Technical Assistance

The following situations do not qualify as “providing onsite technical assistance” for the purposes of this exemption:

- Conservation compliance reviews.
- Whistleblower complaint investigations.
- Requests for determinations by FSA because the producer certified compliance on form AD–1026 and FSA has reason to believe the person did not meet HELC requirements.
- Requests from other Federal agencies.

d NRCS Action Required

NRCS will, within 45 days after observing a potential HEL compliance deficiency while providing routine technical assistance, provide the USDA participant with information as to the actions or practices needed to be in compliance with the HELC provisions.

Do not request an FSA–569 unless the participant has refused to agree to an HEL conservation plan or fails to apply the required HEL conservation system within the required time frames.

Guidance is provided in the following table for granting this exemption from the HELC provisions—

IF the person...	AND the deficiency...	THEN...
Agrees to correct the deficiency within the time schedule, and signs the plan within 45 days, Note: NRCS will not request a form FSA-569 unless the agreement requirements are not met,	Is corrected or the system is fully implemented within 1 year of the violation notification,	FSA will not be informed of the potential violation unless a form FSA-568 has been referred due to a prior-year violation on the tract(s).
	Is not corrected or the system is not fully implemented within 1 year of the violation notification,	Request an FSA-569 from FSA and mark Part C "does not meet" the requirements of the HELC provisions.
Does not agree to correct the deficiency,		Immediately request form FSA-569 and mark Part C "does not meet" the requirements of the HELC provisions.

e Limitations for the Use of This Variance

The use of this variance is not approved when performing compliance reviews or whistleblower investigations.

520.12 “Good Faith” Exemptions**a “Good-Faith” Exemption**

The 1985 Act was amended in 1996 to provide that person(s) who violate the HELC requirements may regain eligibility for benefits as shown in the following table:

IF FSA determines...	AND the person(s)	THEN NRCS will...
That the person acted in good faith without intent to violate,	Agrees, within 45 days, to implement the needed practices or system within an agreed-upon period, not to exceed 1 year,	Provide information to FSA on the AD-1068, Part B, (and Part C if the violation is sodbuster). A compliance review of the tract will be required in the year following the granting of the good faith exemption.
	Agrees, within 45 days, to implement the needed practices or system, but does not implement the approved plan or system within one year,	Report the failure to comply with the HELC provisions on the FSA-569 and return the form to FSA for further action.
	Does not agree to implement the needed conservation practices or HEL conservation plan or system,	Report the failure to comply with the HELC provisions on the FSA-569 and return the form to FSA for further action.

b Payment Reduction Rules for Good Faith

The following table provides the payment reduction requirements when the action occurred in good faith without the intent to violate, and the required practices or systems will be installed within the required time frames.

IF good faith requirements are met, and the violation is on...	Then...
Land that was converted from native vegetation to crop production after December 23, 1985 (sodbusted),	The person will be given a graduated payment reduction of \$500 to \$5,000 based on the acres and erodibility index of the sodbusted land involved.
Land that was planted to an agricultural commodity prior to December 23, 1985,	No payment reduction applies.

c NRCS and CD Role in Good Faith

NRCS, in consultation with the CD, will provide the following information to the FSA County Committee on form AD-1068:

- Any facts about the case that may affect the COC determination.
- Copies of documents containing pertinent information related to the case that provides facts and details that may affect the COC's good faith decision, such as NRCS notification to the producer regarding the determination.
- Whether the producer has obtained or has attempted to obtain a conservation plan for the farm in a timely manner.
- Whether there was any face-to-face discussion with the producer concerning the HELC violation.
- Whether the landlord attempted to work with NRCS in developing a conservation plan that could be actively applied by the producer.
- Information concerning the fields in violation and the erodibility index of each sodbusted field in violation.

Note: FSA will reinstate benefits to the person(s) when FSA receives the AD-1068 indicating that the conservation plan has been signed or an approved conservation system has been applied.

d Completing AD-1068, Parts B and C

Instructions for completing the AD-1068 are shown in the table below:

Part	Item	Required Entry
B	9	Description of pertinent facts by NRCS or the CD.
	10	Signature of NRCS employee and date.
C	11	Field number(s).
	12	Erodibility index.
E	21	Date conservation plan/system agreed upon.
	22	Signature of NRCS employee and date.

520.13 Tenant (Other Producer) Exemption

a Tenant (other producer) Exemption

Tenants may not be subject to loss of all benefits on other tracts if the tenant makes a good faith effort to apply a conservation system and the landlord:

- Will not document an approved conservation system in a conservation plan, or will not allow the tenant to install conservation measures or management practices.
- Imposes terms and conditions that prevent the implementation of a conservation system.

FSA is responsible for determining when this exemption applies.

b Tenant Exemption Procedures

FSA will refer tenant exemption requests to NRCS on AD-1026B.

Upon receipt, NRCS will complete the items in AD-1026B, Part B, and return to FSA. An FSA-569 should be completed to show the tract as “not actively applying” the plan. The FSA County Committee (COC) will use the information to make a person (tenant or renter) exemption determination. Below are the items to be completed by NRCS.

Item	Requested Entry
11	If the landlord has a plan, or if the person had a plan in a timely manner but was not allowed by the landlord to install all of a practice, mark “Yes” and complete questions 12 and 13 based on the landlord’s decisions.
12	Structural measures that are required by the plan that have not been applied.
13	Planting practices that are required by the plan.
14	Signature by District Conservationist and date.

When AD-1026B, Part B, is completed, NRCS will return the form to FSA to make the exemption determination.

c NRCS Procedures

NRCS will—

- Provide the person information, within 45 days of establishing that a conservation system is not being applied, regarding actions needed to comply with the HELC provisions.
- Help the tenant apply conservation measures and management practices from the landlord's conservation plan that are practical for the tenant to apply.
- Help the tenant apply conservation measures and management practices in the conservation plans or systems covering other highly erodible tracts.
- Help the tenant develop conservation systems on other tracts.
- Help the tenant apply the conservation practices and management measures from the conservation system.
- Follow appeal procedures in CPM, Part [510](#).
- Complete form FSA-569.

- Complete Part B of AD-1026B and return to FSA.

Note: The tract in question should be flagged "not actively applying" by FSA procedures.

520.14 Other Exemptions

a Small Area Exemptions

The small area exemption applies to converted, small, non-cropland areas such as abandoned farmsteads, areas around filled or capped wells, rock piles, trees or brush, etc. within or adjacent to existing fields that are converted to cropland.

These areas must be included in a plan or system for adjacent HEL fields and must meet the level of treatment required for such fields.

NRCS makes this determination on a case-by-case basis.

b Two-acre Noncommercial Cropland Exemption

Areas of two acres or less are exempt from the HELC requirements if used for the non-commercial production of an agricultural commodity, and FSA determines the this production is not intended to circumvent the HELC requirements otherwise applicable. An example of this is a home garden.

c Sodbuster-Interseeding Exemption

The interseeding of close grown crops into existing sod for grazing, haying, or silage shall not be considered planting an agricultural commodity.

NRCS will make the exemption determination.

520.15 Variance for Special Problems, Including Weather, Pests, or Disease

a Description of the Temporary Variance

A temporary variance from the practices specified in the person's HEL conservation system, and/or involving the use of practices or measures to address weather, pest, or disease problems, may be granted. (See NFSAM, Part 512, Subpart C, Section [512.20](#).)

b Requirements for the Variance

Requests for this variance will be supported by documentation of the extent and effect of the special conditions, as related to:

- Weather
- Pests
- Diseases

These special conditions will usually involve more than one tract in a county, several counties in a State; or one or more States in the area or region.

c NRCS Response

The NRCS representative shall respond in writing, within 30-days of receipt of the request for the variance as to approval or disapproval.

If NRCS fails to respond within the 30-day period, the variance becomes automatic, unless the person had reason to know the variance would not be granted, (i.e., a request for the variance based on excessive rain, when county rainfall records for the period cited in the request show a less than normal rainfall.)

If the NRCS representative has reason to believe that the request for the variance is not justified, or that documentation submitted is not sufficient to indicate the existence of a special problem.

In this case, the standard letter will be sent to the person requesting the variance, immediately stating that more time will be required to process the request due to insufficient information provided..

d NRCS Action

NRCS, in consultation with the CD at the local level, will review the requests for the variance, in comparison with the known local conditions and factors.

The following factors shall be considered—

- Incidence of crop disease in the area.
- Percent of stand damaged or destroyed.
- Percent of expected crop production compared to normal production.
- Documentation of weed or insect infestations.
- Comparison of weather event to historical records.
- Documentation of severe weather conditions.
- Other special circumstances that prevented the implementation of conservation practices or systems, installation of structures, or planting of cover crops.

e Steps for Granting the Variance

The following table provides procedure to be used if a producer requests this variance.

Step	Action
1	DC will receive written and dated requests for a variance at the field office. Field offices will date stamp the request upon receipt.
2a	DC will notify the STC of requests received. Where area offices exist, notification should be through that office.
2b	If it is determined that sufficient documentation was not presented to support the request for variance from special weather, pest, or disease conditions, the DC will send a letter stating that more time will be needed to granting the request.
3	DC will notify the conservation district upon receipt of variance requests.
4	DC will assemble producer's documentation on need for variance request.
5	Grant the variance request if the criteria developed by the local review group, and as reviewed by the State Technical Committee, have been met.
6	The State Conservationist will determine if the need for the variance is regional in scope, and will coordinate the use of the variance with the adjacent States.
7	All variances granted for this purpose will be fully documented. All tracts granted this variance will be placed on the following year's compliance review list.

f Limitations for the Use of this Variance

The use of this variance is limited as follows:

- May be used only when application of the conservation system is prevented due to severe weather, crop pest infestations, or crop diseases.
- May not be used when there has been NRCS error or untimely provision of technical assistance.
- May only be used if the following documentation exists:
 - For specific farm/tract requests, the information included in [paragraph e](#), (above) must be included in the case file.
 - For area-wide, county-wide, or State-wide variances, the disaster, special problem, weather- or pest-related problem must have been a declared disaster either by FSA, the Governor of the State, USDA, or the President.

520.16 Variance for a Failure of a Technical and Minor Nature**a Technical and Minor Deficiencies**

A compliance deficiency is considered technical and minor in nature if it has little effect on the erosion control purposes of the conservation plan or system.

Deficiencies can be—

- Failure to apply one or more practices according to the FOTG.
- Failure to maintain one or more previously applied practices.

b NRCS Action

This table provides guidance for providing assistance for deficiencies considered technical and minor in nature.

Step	Action
1	Document which practices do not meet criteria in the FOTG.
2	Determine and document the impact of the failure to apply the practice/system.
3	Document the case file, indicating any previously applied practices needing maintenance, but that are still serving the intended purpose.
4	Work with the person to revise the plan/system to more suitable practices, or to perform the needed maintenance.
5	Notify the person that he/she will need to certify correction of the deficiencies within one year and that the tract will be placed on the following year's compliance review list.

This variance is granted by NRCS District Conservationists.

c Limitations for the Use of This Variance

The use of this variance is limited as follows:

- May be used only when the deficiency is minor.
- May not be used when there has been NRCS error or untimely provision of technical assistance.
- May not be used when a farmer or rancher voluntarily changes a conservation system in place.
- Must be used with great infrequency, (i.e., only for new farmers and ranchers or farmers and ranchers with land coming out of CRP).

520.17 Variance for Personal Hardship

a Description

A variance may be granted when a special problem, such as a technical error or incorrect plan, extreme personal hardship, or unusual occurrence prohibited application of the required planned practice(s). This variance is a specifically identified problem unique to that person including—

- Severe physical condition.
- Death of the farm operator or family member that prevented the application of the scheduled practices.
- Destruction of a building or equipment by fire or similar situation.
- NRCS error that prevented the person from applying the practice.

b NRCS Action

The following table describes actions to be taken for making a personal hardship variance determination.

Step	Action
1	DC will obtain person's supporting data and request variance from the State Conservationist.
2	All decisions for this variance will be made on a case-by-case basis.
3	Document decision in the case file.
4	If granted, inform the person that he/she will be required to implement the system within a year, and that the tract will be added to the following year's compliance review list.

NRCS will grant this variance.

c Limitations for the Use of This Variance

The use of this variance is limited as follows:

- If for physical condition of the principal farm operator or destruction of buildings and equipment, there must be sufficient documentation placed in the case file to support the need for the variance.
- If for NRCS error or untimely provision of technical assistance, there must be sufficient information provided in the case file to support the need for this variance as follow:
 - The farmer or rancher applied for technical assistance in sufficient time for NRCS to provide the assistance.
 - The farmer or rancher does not have sufficient knowledge of what was needed in the conservation system to be in compliance with the HELC provisions.
 - There have been no previous uses of this variance for the same reasons.

520.18 Variance for Undue Economic Hardship

a Description

A person may be exempt from loss of all benefits for failure to apply a conservation system if the system required to meet a substantial soil loss reduction level would impose an undue economic hardship on the person, and the State FSA Committee provides the person with a variance on the basis of the hardship.

b NRCS Action

NRCS will complete the AD-1026D, Part C, Item 11, including any comments from the Conservation District that could assist in making the determination. Upon notification by FSA that relief has been granted to the person, NRCS will work with the person to—

- Develop a system that meets the FOTG standards, the local resource conditions, available conservation technology and the economic capabilities of the person.
- Provide a revised implementation schedule, not to exceed one year.

Inform the person(s) that he/she will need to certify completion of the system to NRCS and that the tract will be on the following year's compliance review list.

